

1934-39

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

NOTICE OF REMOVAL

Defendants, American Portfolio Mortgage Corporation (“APMC”) and Dovenmuehle Mortgage, Inc. (“Dovenmuehle ”) (collectively “Defendants”), hereby remove this case, *Deanna Ruettimann and Patrick Ruettimann v. American Portfolio Mortgage Corporation, and Dovenmuehle Mortgage, Inc.*, from the State of Minnesota, District Court, County of Hennepin, Fourth Judicial District (“State Action”) to the United States District Court for the District of Minnesota to 28 U.S.C. §§ 1331, 1441 and 1446 and as grounds for removal states as follows:

Statement of the Case

1. On August 4, 2022, Plaintiffs commenced the State Action against the Defendants by serving the Defendants with summons and complaint. *See* Minn. R. Civ. P. 3.01, 3.02. At the time of filing this Notice of Removal, the State Action has not yet been filed in the District Court of Minnesota, County of Hennepin, Fourth Judicial District, or in any other District of Minnesota state court division. However, in Minnesota a state court action may be commenced by serving, not filing, a complaint. Minn. R. Civ. P. 3.01. This type of procedure is referred to as “pocket service.” *See Harris v. Chase Bank USA, N.A.* 2012 WL 1948775, at *1 (D. Minn. 2012). Copies of the Summons and Complaint are attached as Exhibit B.

2. The Complaint purports to assert ten causes of action including: 1) separate violations of the Real Estate Settlement Procedures Act (“RESPA”) 12 U.S. C. § 2605 (Counts I, IV, V) and RESPA’s regulations under 12 C.F.R. 1024 (Counts II, III, VI); 2) violation of the Minnesota Residential Mortgage Originator and Servicer Licensing Act, Minn. Stat. §58.13, 58.18 (Count VII); Breach of Contract (Mortgage) (Count VIII); Breach of Duty of Good Faith and Fair Dealing (Count IX) and Tortious Interference with Contractual Relations (Count X).

3. Plaintiff seeks compensatory damages in excess of \$50,000 excluding statutory and attorney fees pursuant to RESPA and the Minnesota Residential Mortgage Originator and Servicer Licensing Act.

Federal Question Jurisdiction under 28 U.S.C. § 1331

4. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because Plaintiffs claims arise under federal law. Plaintiffs alleged multiply violations of RESPA, 12 U.S.C. § 2605 and 12 C.F.R. 1024 (Counts I-VI) for Defendants’ alleged failure to comply with this federal statute and regulations in administrating Plaintiffs’ mortgage escrow account. This Court also has supplemental jurisdiction to hear the state law claims that arise from the same core of operative facts alleged to plead the RESPA claims. 28 U.S.C. § 1337. (Counts VII-X, Minnesota Residential Mortgage Originator and Servicer Licensing Act. Minn. Stat. §58.13, 58.18, breach of contract, breach of duty of good faith and fair dealing and tortious interference with contract.)

All Procedural Requirements for Removal Have Been Satisfied

5. Pursuant to 28 U.S.C. § 1446(a), no other process, pleadings, orders and documents from the State Court Action have been served upon Defendants.

6. This Notice of Removal has been filed within 30 days of the date that Defendants were served with the summons and Complaint in this matter. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(c) and 1446(a) because the U.S. District Court for the District of Minnesota is the federal judicial district embracing the where the State Court Action was originally commenced.

8. As required by 28 U.S.C. § 1446(d), Defendants will promptly file a copy of this Notice of Removal with the Clerk of the District Court of Minnesota, County of Hennepin, Fourth Judicial District, and serve copies of the same on all parties to this action.

CONCLUSION

By this Notice of Removal, Defendants do not waive any objections they may have as to service, jurisdiction or venue, or any other defenses or objections they may have to this action. Defendants intend no admission of fact, law, or liability by this Notice, and expressly reserve all defenses.

Respectfully submitted,

/s/ Kevin T. Dobie
One of the Attorneys for Defendant
American Portfolio Mortgage Corporation

Respectfully submitted,

/s/ Michael Sauer
One of the Attorneys for Defendant
Dovenmuehle Mortgage Inc.

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